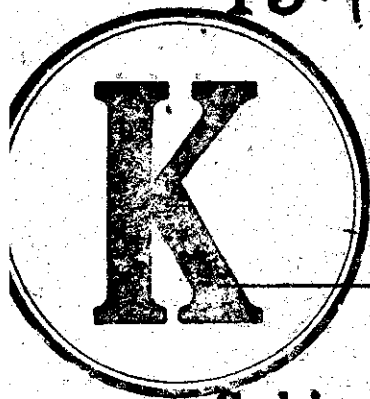




1949.

Electric Supply
(L. u. W. C.)

File No. 49

Legal Department

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Subject:— Opinions under the

Bombay, Electric Supply (Licensed
Under takings' War Costs) Order
1944.

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File No.

Form 124

Electric Supply (L. u. W. C.)
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C O N T E N T S .

Legal Department File No. O. Elec. Supply(L.M.W.C.)/1949

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R.I.No.9491 dt 27.9.49

Submitted with reference to P.W.D. office note on pages 189-191 ante.

2. The facts of the case in brief are as follows :-

Under the provisions of the Bombay

attached to P. 1 ante Electric Supply (Licensed Undertakings' War Costs) Order 1944, the rate of war costs surcharge in the case of Ahmedabad Electric Supply Co. Ltd. was fixed at 10 per cent by Govt. Order dated 10.8.1944; increased to 15 % by G.O. dated 15.8.1944; and finally fixed at 20 % by G.O. dated 1.9.1944. In accordance with the provisions of clause 6 the Company executed an undertaking in the form set out in the second schedule to the said order on 11.9.1944. Under clause (b) of this undertaking the Company has during the continuance of the taxation provisions of the Excess Profits Tax Act, 1940 the profits earned by the Co. in excess of 7 % of the capital employed in the business, less tax thereon, are to be transferred to a Rates Stabilisation Reserve. The total amount so accumulated by the Company on 31.3.1946 stood at Rs.2,21,220/-. As far back as 2.9.1946 the Company requested Govt. to permit them to utilise this sum to recoup its General Reserve which were seriously reduced to the extent of Rs.2,40,000/- by reason of the delay on Govt's part in sanctioning the levy of war costs surcharge. On this question Govt. accepted the view of the Examiner, Outside Audit (agreed to by the Electrical Engineer) that the amount of Rates Stabilisation Reserve is intended to be used for purposes of giving relief to the consumers and its diversion to the General Reserve would defeat the very purpose of the Rates

* p. 19 ante

@ p. 26 ante.

/ p. 62 ante.

* p. 64 ante.

* p. 120 ante.

@ p. 121 ante

Stabilisation Reserve and of the R.L.A. as contained in his opinion No.8367 dated 14.8.1947 that the company can have no legal claim against Govt. for compensation on the ground of delay in sanctioning the levy of war costs surcharge and in G.L.R. W.D.No.7015/36 El. dated 23.9.1947 informed the company accordingly. The Company thereafter in their letter * dated 12.5.1948 contended that on 30.9.1947 the nett deficiency in permissible profits of the Co. since the inception of War Costs Surcharge was 6, 33,938 and since in accordance with the Excess Profits Tax Act the amount of deficiency in any year is to be set off against any excess profit in previous year there was no justification for applying any sum to special relief of consumers. To this contention Govt. in P.W.D. letter No. 7015/36 El. dated 13.12.1948 replied as follows :-

/ p.135 ante
* p. 159 ante
p. 175 ante

"As the Excess Profit Tax Act ceased to operate after the 1.4.48 the question of setting off the deficiency of Rs.8,15,987 against the previous Excess Profit does not arise. Moreover the undertaking given by you does not provide for setting off deficiency against excess profit of previous years. I am accordingly to request that the amount in question should be carried to the Rate Stabilisation Reserve for giving relief to the consumers. "

The Co. has now again on 29.12.1948 represented (pp. 179-181 ante) that the fundamental objective of the War Costs Surcharge Order was to ensure that licensees should be entitled to a fair return in an adverse circumstances and the inclusion of the sixth schedule to the Electricity Supply Act, the Co. will never be in a position to reset its tariffs so as to recoup its accumulated deficits and has requested Govt.

allow the matter to rest. On this representation the Examiner, Outside Audit considers that :

*p. 185 ante.

" Strictly according to the provisions of paragraph 6 of the Bombay Electricity Supply (L.U.W.C.) Order 1944 and in accordance with the undertaking given by the Co. the amount in question should be credited to the Rates Stabilisation Reserve since it was not taken into account by it to reduce the charges for the supply of energy to the consumers.

A reference is however, introduced to the sixth ^{Schedule} ~~schedule~~ to the Electricity Supply Act, 1948 passed by the Dominion Legislature on the 10th Sept. 1948 which enjoins how the existing reserves have to be dealt with and what new reserves ~~have to be dealt with~~ are authorised and built up.

Under clause III of that Schedule the amount which should have been credited to the Rates Stabilisation Reserve."

The Electrical Engineer however is inclined to agree with the contentions of the Co. on the grounds that :

(1) The Excess profit Tax Act, 1940 has ceased to operate and clauses (a) and (b) of the undertaking given by the Co. has become inoperative;

(2) That under the proviso to para 6 of the Bom. Electricity Supply (L.U.W.C.) Order empowers Govt. to waive the execution of clause (a) of the undertaking if Govt. is of opinion that it would be unduly repressive to the undertaking;

(3) That the Co's excess profits as calculated under the Sixth Schedule of the Electricity (Supply) Act, 1948 falls short of the reasonable return by nearly 1/2 lakhs.

He has therefore recommended that the matter be dropped & after consulting the R.L.A. The R.L.A. is requested to advise whether view taken in G.L. P.W.D. No. 7015/36 dated 13.12.1948 (also para 8 of the P.W.D. note on p. 190-191) is correct.

3, Paragraph (b) of the undertaking executed by the Ahmedabad Electric Supply Co Ltd. under clause 6 of the Bombay Electric Supply (Licensed Undertaking's War Costs) Order, 1944 runs as follows:-

" If at any time during the enforcement of the taxation provisions of the Excess Profits Tax Act, 1940 the Company's undertaking in any accounting period ending subsequent to the date of war costs surcharge is fixed under the aforesaid Order, earns profits exceeding 7 per cent of the average amount of capital employed in the business during that period, then the amount of the excess after deducting any smaller amount recorded or set aside to Reserve in terms of clause (a) of this undertaking and the taxation due on such excess will be taken into account to reduce the charges for supply of energy or be set off to the Rates Stabilisation Reserve in t...

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Office of the R.L.A.

Bombay Electric
Supply (L.U.W.C.)
Order, 1944

Rates Stabilisation
Reserve Fund of the
Ahmedabad Electric
Supply Co. Ltd.

The view taken by the Examiner, Outside Addit, is correct. According to the undertaking executed By the Ahmedabad Electric Supply Co. Ltd. in the form set out in the second Schedule to the Bombay Electricity supply (Licenced Undertakings' War Cost Order, 1944, the amount of Rs. 2,21,200/- credited to the Rates Stabilisation Reserve Fund is intended to be used for the purpose of giving relief to the consumers and its diversion to the general Reserve as proposed by the Company, be it on any grounds, would certainly amount to a breach of trust. The view taken by the Electrical Engineer to Government that the Excess Profits Tax Act, 1940 being no longer in operation, neither clause (b) nor clause (a) of the undertaking in the second schedule would be operative, and the amount can be utilized by the Company as proposed is not correct. On those clauses reference to the Excess Profits Tax Act is made with a view to limit the period during which the accumulation of the rates stabilisation reserve should continue. The Company appears to be contending that in accordance to the Excess Profits Tax Act which governs the undertaking given by the Company the amount of deficiency in any year is to be set off against any excess profit in previous years. This argument is hardly tenable. The setting off of any deficiency in any year against any excess profit in previous years provided for by the Excess Profits Tax Act is intended to govern the assessment of the Excess Profits. ~~It does not~~ ~~can't~~ Tax Act on such profits and does not in any way control or allow the disposal of such profits. In the present case these profits amount to Rs. 2,21,200/- credited to

the Rates Stabilisation Reserve. Consequently, the provisions in the Excess Profits Tax Act do not regulate the application of this fund. The Company would not therefore, be allowed to set off this amount against any deficiency suffered by it in previous years.

Sd/- P.M.Lad,
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C. S. Ramambramam of Legal Affairs.

U.R. to P.W.D. No. 10482, dated the 16th September 1949.

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Submitted.

Please see P.W.D. o.n. at p. 197 ante. As stated therein, in the case under reference the R.L.A. was asked to advise Govt. on the following two points:

(i) Whether the view of Govt. that the Ahmedabad Electricity Co. Ltd., is bound to carry the amount of Rs. 2,21,200/- to the "Rates Stabilisation Reserve" in accordance with clause (b) of the undertaking given by the Co., and

(ii) whether it is open to Govt. to drop the matter and not to ^{insist} insist upon the Co. to take up the amount of Rs. 2,21,200/- to the "Rates Stabilisation Reserve."

In para 3 of the said note it is ^a stated that "regarding (i) the R.L.A. opines that the amount of Rs. 2,21,200/- credited to the "Rates Stabilisation Reserve" Fund is intended to be used for the purpose of giving relief to the consumers and its diversion to the "General Reserve" as proposed by the Co. be it on any grounds, would certainly amount a breach of trust and that the provisions of the excess profit Tax Act do not regulate the application of this fund. It therefore states that the Co. would not be allowed to set off the amount in question against any deficiency suffered by it in previous years". The question raised for consideration of the R.L.A. is whether it is open to Govt. to drop the matter and not to insist upon the Co. to take up the amount of Rs. 2,21,200/- to the "Rates Stabilisation Reserve".

In opinion No. 10482 dated the 16th ~~Sept.~~ Sept. 1949 R.L.A. has clearly stated that

according to the undertaking executed by the Ahmedabad electric supply Co. Ltd. , in the form set out in the second schedule to the Bombay Electricity Supply (Licensed undertaking War Costs) Order, 1944 the amount of Rs. 2,21,200/- credited to the Rates Stabilisation Reserve Fund is intended to be used for the purpose of giving relief to the consumers and its diversion to the general Reserve as proposed by the company, be it on any grounds would certainly amount to a breach of trust." It was further pointed out that "these company appears to be contending that in accordance to the Excess Profits Tax Act which governs the undertaking given by the company the amount of deficiency in any year is to be set off against any excess profit in previous years. This argument is hardly tenable. The setting off of any deficiency in any year against any excess profit in previous years provided for by the Excess Profits Tax on such profits and does not in any way contravene or allow the disposal of such profits. In the present case these profits amount to Rs. 2,21,200/- credited to the Rates Stabilisation Reserve. Consequently the provisions in the Excess Profits Tax Act do not regulate the application of this fund. The company would not therefore, be allowed to set off this amount against any deficiency suffered by it in previous years."

Paragraph (b) of the undertaking executed by the Ahmedabad Electric Supply Co., Ltd. under clause 6 of the Bombay Electric Supply (Licensed undertakings War Costs) Order, 1944 runs as follows :-

"If at any time during the enforcement of the taxation provisions of the Excess Profits Tax Act, 1940 the company's undertaking in any accounting period ending subsequent to the date of War Cost Surcharge is first fixed

aforesaid Order , earns profits exceeding 7 pe
cent. of the overage amount of capital employed
in the business during thatperiod, then the
Amount of the after deducting any .

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Officer of the R.L.A.

The Bombay Electric
Supply (L.U.W.C.)
Order, 1949.

Rates Stabiliza-
tion Reserve Fund
of the Ahmedabad
Electric Supply
Co. Ltd.

As the amount of Rs. 2,21,200/- is held by the Company as trustee for the benefit of the consumers the amount will have to be applied for that purpose. Consequently Government should insist upon the Company to carry that amount to the Rates Stabilization Reserve.

Sd/- P.M.Lad,
12/12

o.c. Remembrancer of Legal Affairs.

U.R. to P.W.D.NO. 14444 dated the 13th December 1949.

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